

In a December 11, 2018 report, Dr. J. Kevin Brooks, a Board-certified orthopedic surgeon, requested that the acceptance of appellant's claim be expanded to include a right shoulder condition. He alleged that due to continuous and excessive stress placed on the right shoulder through the use of an assistive device, appellant developed severe tendinosis and tear of her

supraspinatus and of her proximal biceps tendons. Dr. Brooks explained that the proximal biceps tendon is lodged in a groove that also runs between the acromion and the head of the humerus and is easily impinged. He opined that the infraspinatus and subscapularis tendinosis was a clear indication of the excessive force placed through the shoulder to destabilize the shoulder joint every time appellant shifted her body weight into the assistive device to take a step. Dr. Brooks also opined that due to the findings on the October 26, 2016 magnetic resonance image (MRI) scan, new diagnoses included a complete tear of the right rotator cuff and a labral tear of the long head of the right biceps tendon. In a separate letter dated December 11, 2018, he requested that acceptance of appellant's claim be expanded to include a right knee condition. Dr. Brooks explained that appellant's current right knee condition was due to overcompensation of her gait due to her left knee injury.

On January 22, 2019 then-counsel for appellant requested that the acceptance of appellant's claim be expanded to include a right shoulder and right knee condition.

By a May 30, 2019 decision, OWCP denied appellant's request to expand the acceptance of her claim to include a consequential injury, as the evidence of record did not demonstrate that the weakness or impairment was caused by the accepted work-related injury or led to an aggravation of the original injury or a new injury.

OWCP subsequently received a May 27, 2019 letter from then-counsel for appellant. Counsel argued that the claims examiner had scheduled an examination without addressing the issues related to expansion of the claim. He submitted copies of Dr. Brooks' December 11, 2018 reports.

On May 25, 2020 appellant requested reconsideration. In an attachment to her request for reconsideration, she submitted arguments in support of her request to expand the acceptance of her claim. Appellant noted that her treating physician, Dr. Brooks, provided a report dated December 11, 2018, with detailed rationale in support of expanding her claim to include her right shoulder and right knee conditions. She argued that the second opinion physician "obviously" did not read any of these reports, nor did he look at her MRI scan, which was performed after onset of pain due to using her assistive device while recovering from left knee surgery. Appellant noted that the second opinion physician "specifically told me on several occasions that he was not going to read any of Dr. Brooks' medical notes, letters, x-rays, or MRI's." She also argued that the second physician's reports were erroneous because he claimed she had preexisting conditions, and she denied having preexisting conditions and related that her conditions arose after her injury.

By decision dated June 4, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim.

The Board finds that this case is not in posture for decision.

Section 8124(a) of FECA (5 U.S.C. § 8124(a)) provides that OWCP shall determine and make findings of fact and make an award for or against payment of compensation. Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons. As well, OWCP's procedures provide that the reasoning behind

OWCP's decision should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹

In the June 4, 2020 decision, OWCP summarily denied appellant's request for reconsideration and did not reference or discuss the argument or evidence submitted after the May 30, 2019 merit decision. In its decision, it did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision, *i.e.*, why the argument and evidence submitted on reconsideration was insufficient to meet any of the requirements of 20 C.F.R. § 10.606(b)(3), warranting further merit review. This case must therefore be remanded to OWCP for an appropriate decision on appellant's reconsideration request that describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request,² pursuant to the standards set forth in 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126. Accordingly,

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

² See *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *T.M.*, Docket No. 17-1609 (issued December 4, 2017); *J.J.*, Docket No. 11-1958 (issued June 27, 2012).

IT IS HEREBY ORDERED THAT the June 4, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 2, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board